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MINUTES

January 27-28, 2000
Federal Building
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

COMMITTEE MEMBERS PRESENT

Rep. William Menahan (Chairman)
Sen. Tom Beck (Vice Chairman)
Sen. B. F. "Chris" Christiaens
Sen. Bruce D. Crippen
Sen. Mack Cole
Sen. Steve Doherty
Rep. Billie I. Krenzler
Rep. Mark Noennig
Rep. Emily Swanson
Rep. Billie Krenzler
Rep. Paul Sliter

COMMITTEE MEMBERS EXCUSED

Sen. Debbie Shea
Rep. Karl Ohs

STAFF PRESENT

Robert B. Person, Executive Director
Greg Petesch, Director of Legal Services
Dave Bohyer, Director of Research and Policy Analysis
Ellen Garrity, secretary

COMMITTEE ACTION

Approved the September 17, 1999, minutes. (Swanson)

Agreed to support staff proposal to develop options for participation in the Redistricting Data Program of the U.S. Bureau of the Census. (Beck)

Agreed to correct the operating budget by inserting the pay plan. (Beck)

Approved the allocation of the Program 21 funds to some committees (as requested by Mr. Person), allocate an additional \$10,000 out of the contingency budget to River Governance, and move the money that has been recorded against the House and Senate budget into Program 21 which then will be recorded against the \$10,000. (Krenzler)

Agreed to continue the intern program, adopt short term goals, and urge the subcommittee on public education to look at a long-term improvement program. (Swanson)

Set the price for Annotations 200 update at \$310 a set. (Doherty)

CALL TO ORDER AND ROLL CALL

Chairman Menahan called the meeting to order at 1 p.m.

Rep. Swanson moved that the minutes of the September 17, 1999, meeting be approved. The motion passed.

Executive Director Bob Person recommended an additional Council meeting in late March or early April to discuss a number of issues which should be resolved before the June meeting.

JUDICIAL REDISTRICTING STUDY ISSUES

Exhibit #1, House Bill No. 339 Study on the Necessity of Judicial Redistricting Draft Study Plan

Susan Fox, staff person for judicial redistricting, presented a background report on the issue. HB 339 provides for an interim study of the necessity of redistricting the state's judicial districts. The Legislative

Council assumed responsibility as the appropriate interim committee for this study. Members of the subcommittee are Senators Beck, Shea, and Doherty and Representatives Menahan, Sliter, and Noennig.

Ms. Fox said the subcommittee may be able to gather sufficient data to determine whether judicial redistricting is necessary but may not be able to gather sufficient data to actually redistrict. The Legislature cannot remove any judge from office. This becomes important in the study plan because 31 of the judges will be up for election this coming year and they are elected for six-year terms. Some general information will be available in February or March on judicial caseloads.

HB 339 contemplates an additional group of people helping the subcommittee. A decision has not been made on whether to add an ad hoc working group or enlarge the subcommittee to include district court judges and clerks, court reporters, juvenile probation officers, and others.

Judge John Warner, Havre district court judge, said redistricting will create some shuffling of judges but there will not be any fewer judges. The policy decisions will be tough for the legislature. Judge Warner recommended having a judge or two involved in the study. He said the funding of the district court system is a maze.

Judge Warner said caseload of judges is hard to determine. It depends on how the clerk of court keeps the books. No statistics tell how much time a judge takes on each case.

Rep. Swanson asked if the Council has the option of doing the study. Chairman Menahan said HB 339 provides “for an interim study of the necessity of redistricting the state’s judicial districts.”

Rep. Sliter said the Council voted to conduct the study. That action could be undone. He said some issues dealing with the district court system deserve a hard look. Even if the subcommittee determines that redistricting is not the answer, it may find there are other policy decisions within the subcommittee’s purview that do need to be addressed.

Rep. Noening asked Judge Warner if the Council could get accurate statistical information from the judges. Judge Warner said the necessary information couldn’t be obtained from a questionnaire but judges and their staffs should participate in the study.

Mr. Person said Ms. Fox is qualified to recommend means for gathering accurate statistical information to the subcommittee for proceeding with the study. Ms. Fox can work with the subcommittee to come up with a plan and budget. The subcommittee could then recommend to the next legislature whether or not to proceed with the study.

Sen. Christiaens said maybe it might not be an issue of redistricting, but of how the district courts do business.

Sen. Crippen said judges exist to serve the people. The subcommittee should keep that in mind during its study. The subcommittee will not come up with a perfect solution to the court problem, which may or may not exist. One cannot compare the 13th Judicial District (Yellowstone County) to the district in Plentywood. Sen. Crippen said the subcommittee doesn’t need a volume of facts and figures. He said the subcommittee should continue the study because that is the will of the legislature.

Chairman Menahan thanked Judge Warner and said the subcommittee will keep him informed.

CENSUS REDISTRICTING PROGRAM ISSUES

Exhibit #2, Request to Develop Options for Participation in the Redistricting Data

Program of the U.S. Bureau of the Census

Susan Fox asked for the Council's support to participate in a Bureau of Census project. The Legislative Services Division is statutorily required to provide support services to the Districting and Apportionment Commission. The Commission is dissolved upon the filing of a redistricting plan, approximately 3 years after a census is taken. Between decennial censuses, a U.S. Bureau of the Census Redistricting Data Program supports redistricting activities. As redistricting has become more litigious, the information developed by this program is increasingly important to the process of redistricting and defending any plan adopted. Ms. Fox asked that staff be allowed to explore options for the Legislative Council to consider in conjunction with the Districting and Apportionment Commission so the state can participate more fully in the program following reapportionment in preparation for Census 2010.

Ms. Fox said the Census Bureau database would be a great resource in redistricting. The Districting and Apportionment Commission will support the Bureau of the Census project. Ms. Fox is concerned that when the Commission dissolves, she won't have anyone else to bring the proposal to. The Bureau of the Census will probably send a letter to legislative leadership in 2005 and the project would begin in 2006.

Sen. Beck moved to support Ms. Fox's proposal to develop options for participation in the Redistricting Data Program of the U.S. Bureau of the Census. The motion passed.

SUBCOMMITTEE REPORTS

Exhibit #3, Legislative Services Division Executive Director Recruitment

Personnel Subcommittee

The subcommittee met this morning. Sen. Beck reported that the subcommittee will advertise for the executive director position the first of February. Advertising will close April 1. The subcommittee will then evaluate applications.

Jim Kerins, consultant, said the subcommittee developed criteria for screening applications and the structured formal interview process. The top three candidates will come before the full Council for final screening. The new executive director could be on board in June. Council members were concerned about improving the legislative image with the public. Mr. Kerins said the job description says: "perform a variety of communication activities such as presentations, attending meetings, to build public awareness of the legislative process Coordinate media relations to insure the presentation of factual and timely information." He said it is not a public relations position but the director should be proactive in communications.

The subcommittee also discussed comp time again. How will accumulated comp time issue be handled?

Sen. Beck said two personnel were added to the Legislative Fiscal Analyst's office to help slow the accumulation of comp time.

Greg Petesch, Director of Legal Services, said the Council adopted a policy on this issue and instructed the directors to implement the policy. Some are and some aren't. The pay plan was adopted by the three committees, Finance Committee, Audit Committee, and the Legislative Council.

Mr. Kerins said one of his recommendations to the Council and the other two committees is that the three committees coordinate on the comp time decisions. The comp time issue is fairly basic. There is a current comp time liability and that obligation must be honored. There are options. A use it or lose it policy can be implemented. Caps can be put on accumulating comp time. Or comp time can be managed as a performance management issue and hold the directors accountable for managing that comp time.

Mr. Petesch said historically, when someone resigned or retired with a comp time balance, the Council allowed them to extend their termination date until the comp time balance was used. The Council did not pay a lump sum. It was handled differently by each division. The idea behind the pay plan and the personnel subcommittee adoption of policies was that it would be handled the same for everyone from the date that policy was adopted. What isn't in place is what to do if someone doesn't follow the adopted policy.

Sen. Christiaens said as comp hours continue to accumulate and as raises are given, comp time is paid out at the higher new salary. Some of the comp hours may have started three pay plans ago or longer.

Sen. Doherty suggesting requesting a report of those individuals with comp time and the amount of dollars necessary to pay those hours.

Rep. Sliter said the Council should first learn the tax implications of a total buy out.

Rep. Swanson said the lack of consistency among divisions concerned her. She urged the personnel subcommittee to keep meeting with the Finance and Audit Committees until this issue is resolved.

Rep. Sliter said the new executive director should be given a higher salary with no comp time. The next time a director moves out of another division, implement the same plan.

Sen. Christiaens asked Mr. Petesch if Rep. Sliter's plan could be implemented under the present personnel policy. Mr. Petesch said under the adopted pay plan, the executive director is a classified position just like every other employee. If the Council wants to change how the director's position is dealt with, it will have to amend the existing pay plan.

Public Information Subcommittee

Exhibit #4, TVMt

Rep. Swanson said she, Rep. Noenning, and Sen. Cole are on a subcommittee studying the potential of doing gavel-to-gavel coverage of the legislature and government processes on a public television access station. The subcommittee visited Olympia, Washington, where TVW has operated since 1995, offering unedited, gavel-to-gavel coverage of the state House and Senate, selected legislative hearings, governor's meetings, Supreme Court hearings and other events. The broadcasts run 24 hours a day, seven days a week, every day of the year.

Rep. Swanson said the subcommittee was impressed. It enables people who can't get to a hearing to watch it.

Rep. Noenning said he was skeptical about the idea when he went to Olympia but he found the cameras in Washington were totally unobtrusive and lawmakers didn't play to the cameras. Camera shots are limited to the person speaking, with no reaction shots. The challenge is can the Montana Legislative afford it.

Sen. Cole said there are different technologies to broadcast legislative sessions – cable TV, satellite broadcasting, and public broadcasting or fiber optic cable – with different methods to finance them. A number of representatives from the TV and cable industry, Montana Public Broadcasting and the Racicot administration attended a subcommittee session earlier today.

Stephen Maly, subcommittee staff, said it costs up to \$1.5 million in most states to build the infrastructure for the broadcast cameras and other equipment, with the operating costs varying by the size of the staff. Alaska operates its system with eight employees, while California has the largest staff at 18. Mr. Maly estimated the annual operating costs to be around \$1 million a year, noting that most of the 18 states that broadcast their legislative sessions use a combination of private and public funds. It depends on the technology used. The fact that the restored Capitol building will have cameras installed in both chambers and plug-ins in most of the hearing rooms reduces some future cost demands.

Rep. Swanson said the subcommittee would spend about \$10,000 doing this study.

January 28, 2000

COMMITTEE MEMBERS PRESENT

Rep. William Menahan (Chairman)
Sen. Tom Beck (Vice Chairman)
Sen. B. F. "Chris" Christiaens
Sen. Bruce D. Crippen
Sen. Mack Cole
Sen. Steve Doherty
Sen. Debbie Shea
Rep. Mark Noennig
Rep. Emily Swanson
Rep. Billie Krenzler

COMMITTEE MEMBERS EXCUSED

Rep. Paul Sliter
Rep. Karl Ohs

STAFF PRESENT

Robert B. Person, Executive Director

Greg Petesch, Director of Legal Services
Ellen Garrity, secretary

CALL TO ORDER AND ROLL CALL

Chairman Menahan called the meeting to order at 8:30 a.m.

BUDGET DEVELOPMENT AND REVIEW

Exhibit #5, Legislative Branch Program Structure

Karen Berger, Fiscal Services Manager, reviewed the budget. She said the Council would consider the preliminary budget including new proposals developed to date and give direction for preparation of final branch budget at the June meeting. Consideration includes review of a budget at 85% of base.

Sen. Crippen said the expense of moving Legislative Services back into the Capitol should be included in the budget.

Sen. Beck said term limits makes it even more important to participate in Council of State Governments (CSG) and National Council of State Legislatures (NCSL) to educate new legislators.

Mr. Person said presently the legislature is paying full dues to NCSL and partial to CSG.

Assemblyman Lynn Hettrick, CSG West, said he is present today to answer any questions the Council has about CSG West. CSG West does teleconferencing and televideos because it knows states have limited travel budgets. Montana should still send legislators to conferences that are highly important to the state. River Governance is a meeting that Montana should attend. CSG West's strength is its regional studies. If Montana can send limited membership, it should talk to CSG staff about scheduling meetings that don't overlap.

Rep. Swanson said there is no encouragement to attend CSG meetings. If a legislator wants to go, he or she has to pay his or her own way. Rep. Swanson said as minority leader she is trying to encourage people to attend CSG meetings but it is hard to get people to go.

Pat Joyce, CSG West, said CSG is the national organization with one annual meeting a year. CSG West is the regional organization. All of its meetings will be in the west. River Governance is a special committee, which will meet in Oregon, Washington, Idaho, or Montana. The April 2000 meeting is in Montana at no cost to the state. CSG West has about two meetings a year with committees.

Karen Berger asked what the Council wants included in the budget. How about the personnel officer position? The Legislative Services currently has a contract with Jim Kerins on a retainer of about \$19,000 a year to deal with personnel issues.

Mr. Person said Jim Kerins is on a retainer for about one-quarter time. A personnel consultant on site would be nice. Presently all the directors have equal access to Mr. Kerins. The legislative agencies are moving back into a Capitol that is overcrowded. There is no room for an additional employee.

Chairman Menahan asked Mr. Person to present at the March meeting the proposed contract for Mr. Kerins continuing as a consultant. Does the contract need to be expanded? Chairman Menahan said he likes having an independent personnel consultant. Sen. Beck agreed.

Mr. Person said the directors are working on a merit pay policy, which may appear in the budget.

Sen. Doherty said the NCSL programs he has attended have been excellent. They provide a national perspective, which is needed in the legislature. He asked how much it would cost for participation in NCSL and CSG. Mr. Person said staff will provide that information for the March meeting.

Ms. Berger reviewed the Legislative Services Program 20 operations current budget report. She said she accidentally left off the pay plan so it has not been approved.

Sen. Beck moved to put the pay plan in the operating budget. The motion passed.

Mr. Person congratulated Ms. Berger for a recent clean audit. Ms. Berger, in turn, commended the work of the financial services staff.

REVIEW OF SESSION MINUTES ISSUES

Exhibit #6, Recording legislative intent—summary update on questions

Exhibit #7, Appropriate Minutes Of All Meetings Required

Exhibit #8, legislative history examples by Professor Fritz Snyder, UofM Law School

Marilyn Miller, Chief Clerk of the House of Representatives, gave the history of minutes during her term as chief clerk. She said the House hires 19 secretaries for the session. The Senate hires about 15. Technology for taking minutes is not adequate. There are 35 applications for those 34 positions. In the past, there were more trained secretaries. It is difficult to find qualified committee secretaries.

Sen. Doherty said the House's minutes are a disservice to the people of Montana. The House is obligated to provide the citizens a clear and accurate record of meetings. The abbreviated minutes were done to save money.

Rep. Swanson said there is a general consensus that the tapes and inadequate recording system isn't working.

Ms. Miller said the House minutes include motions and who testified for and against the bill. If the House minutes aren't adequate, someone should tell the next speaker. She said the LFA requires a staff member to edit all his or her committee minutes. So, subcommittee minutes are better minutes.

Kathy Otto, State Archivist, said since 1995, the Historical Society has kept tapes recordings from all committee minutes for three years because there had been many complaints about the quality of the written minutes. In the 1997 and 1999 Sessions, the House written minutes have become less and less useful because current policy dictates that they contain less and less information. After three sessions, when tapes of past years are destroyed or reused, there will be an inadequate written record of the session minutes. The historical voice of the legislature will become only the Senate. Technology will eventually be capable of long-term storage of tapes, but it is not possible yet.

Ms. Otto said the Historical Society believes the best option is to commit resources and/or use court reporters to transcribe significant committee hearings in searchable electronic format.

Professor Fritz Snyder, University of Montana Law School, said he is the library director at the Law School and teaches legal research. He reviewed Exhibit #9. Professor Snyder said minutes are crucial in some situations in determining legislative intent. The Montana District Courts and the Montana Supreme Court will follow legislative intent 95% of the time if it is clear and in the minutes.

Professor Snyder favored Options 2, 3, and 4 of Exhibit #7. Option 2: require that the committee summarize the reasons for its actions in writing. Option 3: use court reporters to transcribe significant committee hearings in searchable electronic format. Option 4: give session secretaries time, resources and support to produce brief summary minutes.

Beth Furbush, Legislative Services Librarian, said she is aware of the minutes problems from the public standpoint and from the creation side. Creating good minutes is difficult. The committee secretaries need skills. Creating a good summary is a skill.

Ms. Furbush reviewed the options on Exhibit #7. Option #1, provide an exact transcript of the sponsor's opening statement, would be a simple step.

Option #2, require the committee summarize the reasons for its actions in writing, will be hopeful. The concern is whether the committee would take it seriously.

Option #3, commit resources and/or use court reporters to transcribe significant committee hearings in searchable electronic format, would produce an excellent, accessible record but would be expensive.

Option #4, give session secretaries time, resources and support to produce brief summary minutes, is the traditional form that has been appreciated by the public but demands a high level of secretarial skill.

Option #5, expand the broadcasting of sessions to include recording and preserving the audio and/or video record, would be an exciting method along with Option #6, improve recording technology for committee meetings.

Assemblyman Lynn Hettrick said each person in a meeting has a microphone. Only one microphone can be on at a time. Tapes of meetings are copied to compact discs where it is easy to access information. Compact discs are easy to store also. Reviewing a written set of minutes, listening to tapes or compact discs all take time. How much time depends on how sophisticated the indexes are.

Chairman Menahan asked Council members to study the options and come back with an idea in March.

Rep. Swanson asked staff to contact NCSL and CSG to find out how other states do committee minutes.

LEGISLATIVE COMMITTEES AND ACTIVITIES BUDGETS

Exhibit # 9, Program 21 Budget Reallocations for January 2000

Exhibit #10, EQC Budget Supplemental Request

Mr. Person requested an allocation from the Program 21 budget to some committees. The staff looked at all the interim committee budgets and made estimates of what actual cost would be. There was a default budget of \$25,000 for each interim committee. Most of those have been reduced. There is also a \$100,000 contingency budget from which additional money could be drawn. Legislative Services requests additional funding for the Legislative Council personnel subcommittee of \$3,000, \$10,000 for the public information committee, and \$1,000 for the judicial review subcommittee. There is no allocation for the River Governance meetings. About \$1,300 of the Senate budget and a little over \$1,400 of the House budget has been spent for travel to a couple of River Governance meetings.

Sen. Cole distributed Exhibit #10 and said EQC wants two additional committee meetings for the eminent domain study and four additional meetings for Montana Environmental Protection Act (MEPA). Both of the subcommittees are controversial and there is more participation than originally planned.

Sen. Beck said the River Governance study is important to Montana. Sen. Doherty agreed.

Rep. Krenzler moved to approve the reallocation as presented by Mr. Person and to allocate an additional \$10,000 out of the contingency to River Governance and to move the money that has been recorded against the House and Senate budget into Program 21 which then will be recorded against the \$10,000. The motion passed.

INTERN PROGRAM REVIEW

Exhibit #11, Legislative Intern Program

Mr. Person said the Council should strengthen its intern program or drop it.

Connie Erickson, Researcher Analyst, reviewed the history of the intern program. In 1997 and 1999 there was only one intern. Some problems with getting interns are lack of funding or support, the semester system, and a lack of contact between the intern and the Legislative Council. With the semester system a student gives up a whole semester to intern at the session. Ms. Erickson said some short term recommendations are to send out the intern announcement in the spring to the colleges to allow student to plan, provide a training session for legislators who are assigned interns, and provide contacts between interns and the Legislative Services Division.

Ms. Erickson said a long-term suggestion is to see if a better program can be designed. She suggested investigating intern programs in other states.

Mr. Person said the intern program has the potential for being a worthwhile program. Interns are not clerical help. There needs to be more involvement by the legislators and by the schools.

Sen. Crippen said an intern takes some effort on the part of the legislator. Colleges should send interns with research skills and some knowledge of the legislative process. It can be a good program.

Sen. Christiaens said interns have been helpful to him in the past. Legislators need all the help they can get.

Rep. Swanson moved to continue the intern program, adopt short-term goals, and urge the subcommittee on public education to look at a long-term improvement program. The motion passed.

PUBLICATIONS UPDATE

Exhibit #12, Montana Legislative Services Publications Update

Mr. Person report that the 1999 MCA Index sets were shipped to customers the week of October 25-29, 1999. The delivery date was approximately three weeks earlier than in 1997.

Mr. Person said Legislative Services was, for the first time, able to ship the annotations update for the first round electronically to the publisher.

Legislative Services staff seek Legislative Council approval to maintain the price for the 2000 Updates at the 1998 level of \$310 a set (which includes the cost of shipping).

Sen. Doherty moved that the price for Annotations 200 update be \$310 a set. The motion passed.

OTHER BUSINESS

Exhibit 13, Developing Legislative Public Education Strategies for the Montana Legislative Council

Mr. Person distributed Exhibit #13. He said the Council needs to decide what education program would be best for legislators in a term limit environment. The paper contains material Mr. Person obtained at the western directors meeting in October in San Francisco and describes education programs in the western states. Many states have a number of smaller orientations for legislators rather than one big orientation.

Mr. Person said the Montana Bar Association has formed a subcommittee on legal education and public service. They are preparing a Law School for Legislators program.

ADJOURN AND CAPITOL RENOVATION UPDATES

The next meeting is set for March 30 and 31.

The Council adjourned at 12:10 p.m. to tour the Capitol project with State Architect Tom O'Connell.

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